

REMARKS

I. Introduction

Claims 34 to 52 are pending in the present application. In view of the following remarks, Applicants respectfully submit that the claims are now in condition for allowance.

II. Rejection of Claims 34 to 39 and 41 to 50 Under 35 U.S.C. § 103(a)

Claims 34 to 39 and 41 to 50 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent No. 5,718,682 ("Tucker") and U.S. Patent No. 5,232,453 ("Plass et al."). It is respectfully submitted that the combination of Tucker and Plass et al. does not render unpatentable these claims for at least the following reasons.

As an initial matter, Applicants maintain all of the positions set forth in the "Response" filed on July 16, 2009.

Claim 34 recites that a port for a catheter includes a chamber for receiving active substances, the chamber being arranged in a housing and closed off by a piercable membrane, and a connecting piece, the connecting piece being capable of connecting to the catheter and in fluid connection with the chamber. Claim 34 also recites that the port includes clamping jaws, the clamping jaws having clamping faces that are situated opposite one another, the clamping jaws being movable from a first position, in which the clamping jaws are spaced away from the housing laterally, to a second position in which the clamping jaws fix the catheter in place between their clamping faces by a clamping action. Claim 34 also recites that the clamping jaws are connected to the housing when the clamping jaws are in each of the first position and the second position.

In support of the present rejection, the Examiner contends at page 2 of the Final Office Action the cup ring halves 56a and 56b of Tucker are shown in a first position in Figure 6 where they are allegedly "laterally spaced apart from the [cup-shaped element] 54 and moves [sic] to a second position (figure 5) where [cup ring halves 56a and 56b] are capable of fixing a catheter between [portions] 64 depending on how the catheter is arranged along tube 60." This assertion is not supported by the disclosure of Tucker, as the phantom lines in Figure 6 are simply an exploded view (see col. 2, lines 44 to 46) to more clearly illustrate the cup halves

56, which, in the configuration of both Figure 5 and Figure 6, are in the same exact position adjacent to cup element 54, as indicated by the solid lines in, e.g., Figure 6. Tucker does not disclose, or even suggest, physically positioning the cup ring halves 56 to correspond with the location of the phantom exploded illustration of Figure 6. Thus, the Examiner's position that the cup ring halves 56 are in a "first position" in Figure 6 and a different "second position" in Figure 5 is untenable.

Further, the Examiner's contention that cup ring halves 56a and 56b are capable of fixing a catheter between portions 64 depending on how a catheter is arranged along tube 60 is plainly inconsistent with what Tucker actually teaches. Initially, the Examiner is necessarily assuming that a catheter is attached to the outlet tube 60 during the formation or assembly of the port 40. However, placement of a catheter onto the outlet tube 60 of Tucker prior to joining and welding together of the ring halves 56 is not taught by Tucker. The Examiner then further assumes that the hypothetical catheter would be pressed onto the outlet tube 60 so far that it extends into the region of the tube 60 where the portions 64 of cup ring halves 56 contact the tube 60. Again, this is not taught by Tucker.

Notwithstanding the foregoing critical deficiencies of the present rejection, even if a catheter were placed on the tube 60 prior to completion of the port 40 and to the depth suggested by the Examiner (which, as set forth above, is not taught or suggested by Tucker), the port 40 would be inoperable. At page 4, lines 42 to 47, Tucker recites that "[t]he cup ring halves 56a, 56b capture opposite side portions of the outlet tube 60 as shown in FIGS. 5 and 6. The cup ring halves 56 further include portions 64 that fill a significant portion of the rectangular opening 66 in the housing 42 into which the outlet tube 60 is received." As illustrated, for example, in Figures 3 to 5 of Tucker, there is no clearance between the outlet tube 60 and the portions 64 of the cup ring halves 56, which must be compressed together and inserted into the housing in order to be welded together. Thus, even if there was already a catheter attached to the outlet tube 60 prior to the manufacture of the port of Tucker—which, as indicated above, Tucker does not teach—the hypothetically placed catheter would prevent assembly of the port. See col. 4, lines 17 to 28 ("The outer diameter of the cup ring 56 is larger than the inner diameter of the bore 48 in the housing 42, and the interference fit achieved upon pressing the cup unit 46 into the housing will serve to lock the components together . . .").

Plass et al. does not cure the critical deficiencies set forth above with regard to Tucker. As an initial matter, there would be no apparent reason to combine the teachings of the implantable port of Tucker and the external catheter holder of Plass et al. In this regard, Tucker teaches various components—including cup-shaped element 54, cup ring halves 56a and 56b, and housing 22—that are permanently welded together to form a port 40. The thusly formed port 40 includes an outlet tube 60 to which a catheter is attachable within a patient's body. See col. 3, lines 65 to 67. At an outward end of the outlet tube 60 is a frustoconical structure that would maintain the catheter in its axial position on the outlet tube 60. See Fig. 3. Since Tucker already has a mechanism to retain an attached catheter, there would be no apparent reason to incorporate an adhesive tape system as taught by Plass et al. Moreover, although the adhesive tape system may be suitable on the outside of a patient's skin, as taught by Plass et al., one of ordinary skill in the art would not employ this system in an implantable device such as the port 40 of Tucker.

Further, even if there were some motivation to combine the teachings of Tucker and Plass et al., which is not conceded, the resulting combination would not have all of the features recited in claim 34. For example, **neither Tucker nor Plass et al. discloses any mechanism configured to retain a catheter by a clamping action**, as recited in claim 34. As indicated above, Tucker teaches an enlarged frustoconical tube section for retaining a catheter, and Plass et al. teaches fixing a catheter with adhesives. Indeed, the only apparent mention of a device configured to fix a catheter by clamping action is found in Applicant's Specification, which cannot be relied upon in establishing a *prima facie* case of obviousness.

As indicated above, the combination of Tucker and Plass et al. does not disclose, or even suggest, all of the features recited in claim 34. As such, it is respectfully submitted that the combination of Tucker and Plass does not render unpatentable claim 34 of any of claims 35 to 39 and 41 to 50, which ultimately depend from claim 34. Accordingly, withdrawal of the present rejection is respectfully requested.

III. Rejection of Claim 40 Under 35 U.S.C. § 103(a)

Claim 40 was rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Tucker, Plass et al., and U.S. Patent No. 6,165,157 ("Dillon et

al.”). It is respectfully submitted that the combination of Tucker, Plass et al., and Dillon et al. does not render claim 40 unpatentable for at least the following reasons.

Claim 40 depends from claim 34 and therefore includes all of the features of claim 34. As more fully set forth above, the combination of Tucker and Plass et al. does not render unpatentable claim 34. Dillon et al. does not cure the defects of the combination of Tucker and Plass et al. set forth above. As such, it is respectfully submitted that the combination of Tucker, Plass et al., and Dillon et al. does not render unpatentable claim 40. Accordingly, withdrawal of this rejection is respectfully requested.

IV. Rejection of Claims 51 and 52 Under 35 U.S.C. § 103(a)

Claims 51 and 52 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Tucker, Plass et al., and U.S. Patent No. 5,167,638 (“Felix et al.”). It is respectfully submitted that the combination of Tucker, Plass et al., and Felix et al. does not render unpatentable these claims for at least the following reasons.

Claims 51 and 52 ultimately depend from claim 34 and therefore include all of the features of claim 34. As more fully set forth above, the combination of Tucker and Plass et al. does not render unpatentable claim 34. Felix et al. does not cure the defects of the combination of Tucker and Plass et al. set forth above. As such, it is respectfully submitted that the combination of Tucker, Plass et al., and Felix et al. does not render unpatentable claims 51 and 52. Accordingly, withdrawal of this rejection is respectfully requested.

V. Discussion of “Connected” at Page 6 of the Final Office Action

At page 6 of the Final Office Action, the Examiner contends that the cup ring halves 56 illustrated in phantom lines in Figure 6 of Tucker are “connected” to the housing of Tucker, despite the fact that the Final Office Action admits at page 2 that this is not the case.

As an initial matter, as more fully set forth above, Applicants note that the phantom lines in Figure 6 of Tucker are simply an exploded view (see col. 2, lines 44 to 46) to more clearly illustrate the cup halves 56, which, in the configuration

of both Figure 5 and Figure 6, are in the same exact position adjacent to cup element 54, as indicated by the solid lines in, e.g., Figure 6.

With regard to the Examiner's contention that "connected" may mean "related to or accompanying" in the context of claim 34, Applicants respectfully disagree. In this regard, Applicants respectfully note that proper claim interpretation requires giving claims their broadest reasonable construction in view of the specification as it would be interpreted by one of ordinary skill in the art. *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (citing *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); M.P.E.P. § 2111. Furthermore, the broadest reasonable interpretation must be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 U.S.P.Q.2d 1464, 1468 (Fed. Cir. 1999); M.P.E.P. § 2111.

It is respectfully submitted that taken in the context of claim 34 and the Specification as a whole, there is no way one of ordinary skill in the art would construe the phrase "the clamping jaws being connected to the housing when the clamping jaws are in each of the first position and the second position" to mean "the clamping jaws *related to or accompanying* the housing when the clamping jaws are in each of the first position and the second position." Indeed, this interpretation does not make sense in the context of claim 34 and certainly would not be consistent with the interpretation of one of ordinary skill in the art.

In view of the foregoing, it is respectfully submitted that the proposed construction of the term "connected" in claim 34 is not in accordance with the guidelines established by the Federal Circuit and recited at M.P.E.P. § 2111.

VI. Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Date: February 16, 2010

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